IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7412 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

PADAMSINGH G KAHNGROT

Versus

TRANSPORT MANAGER

---

Appearance:

MR RS GAJJAR for Petitioner

MR BP TANNA for Respondent No. 1, 2

---

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 18/02/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to quash and set aside the order dated October 17, 1988 passed by the Transport Manager, Ahmedabad Municipal Transport Services terminating his contractual services.

The petitioner has also prayed to direct the respondents to reinstate him in service with all consequential benefits.

2. The petitioner is an Ex-Military service man. Pursuant to memorandum of agreement entered into between the Transport Manager and the petitioner, the petitioner was appointed as Security Officer with Ahmedabad Municipal Transport Services vide order No.234 dated March 11, 1986. While entering into contract of service, specific terms and conditions were stipulated which are produced by the petitioner at Annexure `G' to the petition. The petitioner was allotted residential accommodation in the quarters belonging to the respondent No.2 and allotment of premises was also conditional. The contract of service which was in favour of the petitioner was continued for a period of one year from March 11, 1988 on the same terms and conditions. However, on October 17, 1988, there was some disturbance and as the petitioner had acted high handedly, memorandum of agreement of service entered into between the Transport Manager and the petitioner was terminated w.e.f. October 17, 1988. The petitioner has claimed that the Transport Manager has no power to terminate the services of the petitioner and therefore, termination of his service is bad in law. What is claimed is that only Transport Committee, after passing an appropriate resolution, can terminate his service contract, but the Transport Manager has no authority to terminate his service contract and therefore, the relief claimed in the petition should be granted. It is his claim that with reference to the incident which had taken place on October 17, 1988, a First Information Report was lodged with concerned police station and therefore, without awaiting the report of the investigation, the service contract could not have been terminated. Under the circumstances, the petitioner has filed the present petition and claimed reliefs, to which reference is made earlier.

3. The petition was placed for admission - hearing before the Court on November 2, 1988 and following order was passed :-

"Notice pending admission returnable on 22/11/88.

In the meanwhile, interim relief to the extent of protecting the possession of the quarter as specified in item 8 in the prayer clause i.e. the possession of the quarter allotted to the petitioner should not be disturbed till 23/11/88."

The said interim relief was continued from time to time, but while admitting the matter, the following order was passed by the Court on December 9, 1988 :-

"Rule. By way of interim relief, it is directed that petitioner's possession of the quarter occupied by him shall not be disturbed till February 28, 1989. In the facts of the case, it is directed that if respondents so choose, may file further affidavit in reply latest before January 31, 1989. Thereafter, it will be open to the petitioner to request for fixed date of hearing.

4. Mr. Harin Pathak, the then Chairman, Transport committee, Ahmedabad Municipal Transport Service, has filed reply affidavit and controverted the averments made in the petition. In the reply, it is emphasised that a complaint was filed against the petitioner for the offence punishable under sections 143, 147, 148, 149, 323, 337 of the Indian Penal Code and as the petitioner had misbehaved in a harsh manner with the workers who were ventilating their grievances, termination of contract service is justified. What is stressed in the reply affidavit is that the petitioner was not a regular employee, but was appointed pursuant to memorandum of the agreement entered into between him and the Transport Manager and therefore, the petitioner is not entitled to the relief claimed in the petition. It is also asserted that the petition under Article 226 of the Constitution for enforcement of contractual obligations is not maintainable and therefore, the petition should be dismissed.

5. Heard learned counsel for the parties. It is an admitted fact that pursuant to the memorandum of the agreement entered into between the Transport Manager and the petitioner, the petitioner was appointed as Security Officer with Ahmedabad Municipal Transport Service. The petitioner has produced terms and conditions at Annexure `G' on the basis of which, contractual appointment of the petitioner was made. The main relief claimed by the petitioner in the petition is that termination of contractual service should be regarded as illegal. Thus, it becomes evident that what is sought to be enforced by way of filing the present petition under Article 22 is to enforce contractual obligations.

6. In Food Corporation of India and others v/s Jagannath Dutta and others [ AIR 1993 SC 1494], the

Corporation had terminated agreement as regards private storage agency. The terms and conditions of the contract had permitted termination and accordingly, notice of termination was served on the respondent. That was challenged before the High Court in a petition under Article 226 of the Constitution. A Division Bench had allowed the writ petition. While setting aside the judgement of the High Court, the Supreme Court has held that question of contractual obligations cannot be gone into in writ jurisdiction. In State of H.P. v/s Raja Mahendrapal and others [1999 (4) SCC 43], the Supreme Court has ruled that High Court should not ordinarily entertain a writ petition under Article 226 to enforce a contractual right. In view of the authoritative pronouncement of law by the Supreme Court, I am of the opinion that the present writ petition which is filed for enforcement of contractual obligations cannot be allowed and is liable to be dismissed. In view of this conclusion of mine, it is not necessary to go into the question whether termination of service of the petitioner was justified or not.

7. For the foregoing reasons, the petition fails and is hereby dismissed. Rule si discharged with no orders as to costs. The record does not indicate that ad interim relief was continued after February 28, 1989. However, it is clarified that interim relief, if any, stands vacated.

*****

parmar*